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Message Text

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ACTION EB-07

INFO OCT-01 EUR-12 IO-13 ISO-00 FEA-01 AGRE-00 CEA-01
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SS-15 STR-04 ITC-01 TRSE-00 USIA-06 PRS-01 SP-02
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TO SECSTATE WASHDC 0155
INFO ALL EC CAPITALS
AMEMBASSY PARIS
USMISSION GENEVA

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GENEVA ALSO FOR USMTN
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E.O. 11652: N/A
TAGS: EAGR, EEC
SUBJ: EUROPEAN COURT OF JUSTICE (ECJ) CASE ON NFDM COMPULSORY PURCHASE SCHEME

REF: (A) EC A-133 OF 3/23/76 (B) EC BRUSSELS 4770

SUMMARY: THE ADVOCATE GENERAL HAS ADVISED THE ECJ THAT THE NFDM COMPULSORY PURCHASE SCHEME IS NOT COMPATIBLE WITH ARTICLE 39 OF THE TREATY OF ROME. FINAL DECISION OF THE ECJ ON THIS CASE IS EXPECTED ABOUT MID-JULY. IF THE ADVOCATE GENERAL'S OPINION IS UPHELD BY THE ECJ, THE COMMUNITY COULD CE NUMEROUS LAWSUITS CLAIMING DAMAGE. SUCH A FINDING COULD ALSO PLACE A REAL CONSTRAINT ON FUTURE
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EC POLICY ACTIONS. END SUMMARY.

1. ACCORDING TO PRESS REPORTS, THE ADVOCATE GENERAL OF THE ECJ HAS ADVISED THE COURT THAT THE COUNCIL REGULATION ESTABLISHING THE NFDM COMPULSORY PURCHASE SCHEME (REF A) IS NOT LEGAL. IT APPEARS THAT THE ADVOCATE GENERAL'S FINDING IS BASED ON ACCEPTANCE OF THE CONTENTION OF THE LAWYERS REPRESENTING DUTCH

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AND GERMAN FIRMS THAT THE REGULATION IS NOT COMPATIBLE WITH ARTICLE 39 OF THE TREATY OF ROME (REF. B). ARTICLE 39 LAYS DOWN THE BASIC OBJECTIVES OF THE COMMON AGRICULTURAL POLICY. COMMISSION OFFICIALS AND PRIVATE LAWYERS WITH WHOM WE HAVE BEEN IN TOUCH ON THIS CASE TELL US THAT THEY ARE AWARE OF THE FINDING BUT THAT THEY HAVE NOT YET HAD AN OPPORTUNITY TO REVIEW IT. THE FINDING IS REPORTED TO BE RATHER LONG AND COMPLICATED. ONE COMMISSION OFFICIAL PERIPHERALLY INVOLVED WITH THE CASE SAID THAT HE HAD BEEN ADVISED THAT THE ADVOCATE GENERAL'S OBJECTION TO THE COMPULSORY PURCHASE SCHEME FOCUSSED ON THE PRICE OF NFDM SOLD UNDER THE SCHEME. THIS PRICE WAS HELD TO BE TOO HIGH IN RELATION TO PRICES OF COMPETING PRODUCTS (E.G. SOYBEAN MEAL) AND FOR THAT REASON THE PURCHASE REQUIREMENT WAS NOT FELT TO BE JUSTIFIABLE UNDER ARTICLE 39.

2. AS NOTED IN THE REFTEL, THE OPINION OF THE ADVOCATE GENERAL IS ONLY ADVISORY. CONCLUSION OF THE CASE MUST AWAIT ECJ DECI-SION. THIS DECISION IS EXPECTED ABOUT MID-JULY. NORMALLY THE ECJ FOLLOWS THE ADVICE OF THE ADVOCATE GENERAL, T IT IS UNDER NO REQUIREMENT TO DO SO. SOME OBSERVERS FEEL THAT THE COMPLEXITY OF THE CASE ALSO WEIGHS IN FAVOR OF ECJ ACCEPTANCE OF THE ADVOCATE GENERAL'S OPINION.

3. WHILE THE NFDM COMPULSORY PURCHASE SCHEME HAS ALREADY BEEN TERMINATED, A FINDING THAT IT WAS, AT LEAST IN SOME RESPECTS, ILLEGAL COULD OPEN THE GATE TO A WAVE OF DAMAGE SUITS. A LAWYER INVOLVED IN THE CASE TELLS US THAT SUCH SUITS COULD EITHER BE PURSUED IN THE NATIONAL COURTS OR DIRECTLY IN THE ECJ. DAMAGES CLAIMED AGAINST THE CUNITY COULD INVOLVE COSTS ASSOCIATED
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WITH THE REPLACEMENT OF SOYBEAN MEAL AND OTHER FEEDS BY NFDM, LOSS OF INCOME FROM ELEVATOR ACTIVITIES, E.G., ORAGE AND OTHER OPERATIONAL COSTS WHICH WERE EXCEPTIONALLY ASSOCIATED WITH ADMINISTRATION OF THE SCHEME.

4. AN ECJ FINDING OF ILLEGALITY RE THE COMPULSORY PURCHASE SCHEME WOULD HAVE SERIOUS IMPLICATIONS FOR FUTURE EC POLICY. IT WOULD REPRESENT THE FIRST TIME THAT BOTH THE COMMISSION AND THE COUNCIL HAVE BEEN REBUKED FOR GOING TOO FAR IN REGULATING AGRICULTURAL TRADE. THUS, IT COULD PUT A REAL CONSTRAINT ON THEIR FUTURE ACTIONS IN DEALING WITH AGRICULTURAL SURPLUS PROBLEMS. HINTON

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Message Attributes

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